Fort Myers Beach Town Council

Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes **Monday, May 15, 2023** **9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veach and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veach moved to approve the minutes; second by Council Member Woodson.
Motion carried unanimously.

V. PUBLIC COMMENT

Ed Ryan from Beach Talk Radio thanked 35 volunteers and sponsors for helping with the 5k run. There were four hundred runners and not one injury. He reported that the event raised $11,000.00 for FMB Strong. He presented interim Town Manager Wilkins with a gift to remember the beach by.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Dr. Traci Kohler, Principal of Fort Myers Beach Elementary, was grateful to the district, town and the community for supporting each other. She reported that student assessments took place and the students were out-performing other schools in the district, especially in grades 3-5. She thanked the community for their love and support and noted that the school received $50,000.00 from the estate of Joseph Bishop.

The historic building will be remediated, and students are expected to be in class by the fall. She invited everyone to the musical at 5:30 p.m. in Times Square on Tuesday.

Council Member ~~King~~Veach (amended 6.5.23) noted that Council Members Woodson and ~~Veach~~King (amended 6.5.23) recently had birthdays. He thanked everyone who was involved with the beach elementary school meetings. He thanked a list of people whose support and help was essential. He attended the South Florida Water Management governing board meeting and the CEO of the Conservancy offered to help the town. Council Member King will work with him regarding tickets for a summer school event at the facility.

Vice Mayor Atterholt acknowledged John Goss, Jenny Tardiff, Patrick Vanasse and Monica Schmucker for their passion and for managing the beach school effort when their lives were in disarray. He thanked them for their efforts and Ed Ryan for organizing the 5k run. He suggested that the town begin to think about having events during off-season. He thanked interim Town Managers Wilkins and Holley.

Council Member Woodson thanked the parents, teachers and kids of the beach school. She was proud of what everyone accomplished. She agreed with holding events off-season and suggested a festival for the 4th of July since they were not having fireworks. She thanked interim Town Managers Wilkins and Holley.

Council Member Veach was proud of the community for showing strength and compassion regarding the beach elementary school. He thanked interim Town Managers Wilkins and Holley.

Mayor Allers was proud of the community for their efforts and the positive outcome of the beach school negotiations. He thanked Ed Ryan for the beach run event and the TDC (Tourist Development Council) for approving their requests. The information will be on the town's website. He thanked interim Town Managers Wilkins and Holley.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, Chair of the Marine & Environmental Resources Task Force, reviewed a list of items in his report and requested guidance on issues. He questioned whether anything needed to be added or removed from the list. Vice Mayor Atterholt suggested partnering with the beach school to formulate ideas for a magnet school. Chair Johnson agreed to add the topic to their agenda. Council Member Veach brought up funding for the tree giveaway and Chair Johnson commented that he would call nurseries. Vice Mayor Atterholt questioned whether Tidal Basin could be a resource. Interim Town Manager Wilkins confirmed that Tidal Basin was looking for funding opportunities. Mayor Allers commented that repairing beach accesses was a high priority and that Times Square should be identified as a beach access. Council Member Veach thought there was a way to get the designation and Chair Johnson replied he would research the topic.

Council Member Woodson brought up the importance of Bayside Park and felt that it should be a high priority.

VIII. APPROVAL OF MINUTES

A. Town Council May - 1, 2023

Council Member King moved to approve the minutes; second by Council Member Woodson.
Motion carried unanimously.

B. Management & Planning Session - May 4, 2023

Alyza presented from Tidal Basin, not Eliza.

Council Member King moved to approve the amended minutes; second by Council Member Woodson.
Motion carried unanimously.

IX. CONSENT AGENDA

Council Member Veach moved to approve the Consent Agenda with items A and D pulled for discussion; second by Council Member Woodson.
Motion carried unanimously.

A. Resolution 23-51, Utility Vehicle Replacement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND TAMIAMI FORD, INC. IN AN AMOUNT NOT TO EXCEED $49,054.38, UTILIZING COLLIER COUNTY CONTRACT 19-7522, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO PURCHASE A REPLACEMENT UTILITY VEHICLE; AND PROVIDING FOR AN EFFECTIVE DATE.

Public Works Director Jason Freeman explained that a transit van had broken down and needed to be replaced or repaired. He introduced Utilities Manager Steve Matuska, who explained why they needed a new utilities vehicle.

Vice Mayor Atterholt moved to approve the resolution; second by Council Member King.
Motion carried unanimously.

B. Bay Oaks Youth Programming

Accept the Fort Myers Beach Community Foundation donation of $8,000.00 to be used towards Bay Oaks youth programming.

Council Member Veach moved to accept the donation; second by Council Member Woodson.
Motion carried unanimously.

C. RFP-23-13-CR; Partial Re-Roof of Mound House

Approve the Selection Advisory Committee's recommendation in response to RFP-23-13-CR entitled Partial Re-roof of Mound House, and authorize the Town Manager to negotiate and execute an agreement with Crowther Roofing and Sheet Metal of Florida, Inc.

Council Member Veach moved to approve; second by Council Member Woodson.
Motion carried unanimously.

D. RFP-17-29-AD; Emergency Debris Removal

Approve 60 day extension of debris removal services agreement with Crowder Gulf

Interim Town Manager Wilkins stated the extension was changed from 60 days to 120 days.

Council Member Veach moved to approve; second by Council Member Woodson. Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 23-05; Temporary Housing

Final Reading and public hearing for proposed Ordinance 23-05 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Town Manager Hyatt stated that the temporary trailers were already set up. Town Attorney Herin, Jr. suggested adding the following sentence to the end of paragraph two on page 323: "A TTP shall not be used for the purpose of placing and operating a short-term rental." Adding this statement will clarify that an RV cannot be used for a short-term rental. Mayor Allers questioned whether the ordinance would have to come back to align with possible legislation from the state.
Town Attorney Herin, Jr. replied negatively.
Council Member Woodson mentioned that some people lost their income when their rental property was destroyed. Mayor Allers indicated that the legislature could allow businesses to litigate against municipalities when changes were made to affect their business. He wondered whether the town was restricting their ability to operate their business. Town Attorney Herin, Jr. stated that they were not making a change and trailers were not identified as eligible structures to be licensed for short-term rentals. He did not think a lawsuit would be successful, especially since the ordinance's purpose was to provide relief to individual homeowners whose homes were damaged or destroyed.
No public comment.

Council Member Veach moved to approve the ordinance as amended by the Town Attorney; second by Vice Mayor Atterholt.
Motion carried unanimously by roll call vote.

B. Ordinance 23-07: Parallelogram Lot Setbacks

1st Reading and Public Hearing on proposed Ordinance 23-07 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 5, 2023 at 9:00 AM

Mayor Allers read the title of the ordinance. Community Development Planner Sarah Propst utilized PowerPoint for her presentation. Slides included: Parallelogram Lots - Proposed Ordinance Amendments; New Definitions; New Diagram and Explanation.
Public comment:
Tyler Knafelc from Homebound described one of his client's experiences designing a house under old setbacks. (The recording skipped before he could finish the first sentence.)
Public comment closed.
Mayor Allers was cautious regarding changing side setbacks.
Council Member Veach was uncomfortable with reducing side setbacks for one builder's design.
Mayor Allers thought the design referred to would fit within the current setbacks.
Vice Mayor Atterholt commended the LPA for a reasonable and practical solution.
Mayor Allers liked the fact that the solution did not have an adverse effect on public safety.

Council Member Veach moved to move Ordinance 23-07 to a second reading on June 25, 2023, at 9:00 a.m.; second by Council Member Woodson.
Motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

A. Resolution 23-45; Interlocal Agreement regarding Fort Myers Beach Elementary

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE REBUILD, EXPANSION AND OPERATION OF FORT MYERS BEACH ELEMENTARY SCHOOL; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL

AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Herin, Jr. recognized and acknowledged the parents' hard work, the ad-hoc committee and everyone else who supported the effort. The interlocal agreement (ILA) provided for the rebuild, improvements and eventual expansion of the beach school.
Public comment:
John Goss thanked everyone and noted that the cost per student was the driving issue. He indicated that Dr. Kohler was working hard to find savings. He clarified that the issue was not how many children were enrolled by a specific date, but the cost-per-student had to be in line with Sanibel and Pine Island. He stated that the community would have to start raising money for the school. He requested that 5th graders be allowed to continue the tradition of putting their handprints and names on the sidewalk in the cement.
Patrick Vanasse thanked everyone for their support. He felt the ILA was a good compromise and fair for both parties. If the cost-per-student criteria are not met in four years, the town would have to find other options. He noted 25 kids could participate in summer school at the Mound House this year.
Monica Schmucker requested that the Council support the ILA. She thanked Town Attorney Herin, Jr. for working hard to listen, engage and understand the parents. She also thanked Vice Mayor Atterholt for his compassion, wisdom and listening to the parents. She supported the ILA and noted that it required a committee to be formed to monitor the goals and one member had to be a Town Council member. She recommended Vice Mayor Atterholt for the position since he had been there from the beginning.
Jenny Tardiff thanked everyone for their support and unity. She was thankful that the school would be renovated.
Traci Kohler stated that she was having discussions with the school district regarding the staffing structure and everything was moving in a positive direction.
Public comment closed.
Mayor Allers supported the ILA and Vice Mayor Atterholt's involvement in the committee. He suggested that the town create a corporate partnership strategy concerning after-school activities at the school to help drive numbers up.
Council Member Woodson questioned the ILA concerning the steps to take after renovating the historic school. Vice Mayor Atterholt replied that as the school population grew, state requirements required the school district to respond accordingly to the space needs of the school. Town Attorney Herin, Jr. discussed what the school must do in the ILA. Vice Mayor Atterholt added that the other buildings on the property would be destroyed.
Town Council members did not object to Vice Mayor Atterholt participating on the ad-hoc committee. Town Attorney Herin, Jr. stated that the ad-hoc committee would have to be created with an ordinance.

Vice Mayor Atterholt moved to approve Resolution 23-45; second by Council Member King.

Motion carried unanimously.

B. Beach Profile Monitoring Survey

Authorize Town Manager to approve Supplemental Task Authorization #16 Contract RFQ-20-06-AD for the 2023 Annual Beach Profile Monitoring Survey.

Town Manager Hyatt stated that the town's portion of the contract would be $7,068.00 out of $47,000.00. Environmental Project Manager Chadd Chustz commented that the survey was done every year and will be used for design plans for the renourishment project.

Project Manager Chustz described the progress of the emergency berm and noted most of the sand was on the beach. He indicated that 10,000 linear feet should be surveyed by the end of the week. He confirmed that the berm would be landward of the CWA (Critical Wildlife Area), and sand would be added to Leonardo Arms.

Project Manager Chustz remarked that one berm would be built straight across the beach but sand in front of the accesses would be pushed up and an on-grade access would be created on the sides.

Council Member Veach moved to authorize; second by Mayor Allers.
Motion carried unanimously.

C. SB-4A Grant

Approve submission of a grant application to the SB-4A Waiver program.

Town Manager Hyatt stated the program was for recovery and mitigation activity and was available from July 15, 2023, through June 2027 or until the funds ran out. Funds available were from $250,000.00 to $1 million and the grant was reimbursable. Council Member Woodson questioned how the funds would be used. Town Manager Hyatt replied that they would determine which projects would be prioritized.

Council Member Veach questioned whether Bay Oaks would qualify. Town Manager Hyatt was not sure, but he would share details as they become available.

Council Member King moved to approve; second by Council Member Woodson.
Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

Terry Persaud, business owner, stated that the Town Attorney Herin, Jr. did not submit a counterproposal to his attorney. A federal mediation was scheduled for 2:30 p.m. today and he questioned why no one from the town was attending.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt sent a press release concerning hurricane and emergency preparedness and noted that hurricane reentry passes were ordered. He will review the purchasing policy and is waiting for the disbursement of the emergency bridge loan agreement. The $8.8 million balance of the capital improvement revenue note may be used for FEMA-reimbursable projects. The extended deadline for drawing down the funds was extended to May 2024 with an interest rate of 3.15% and the town applied for a $5 million community disaster loan.

Mayor Allers questioned whether the $8.8 million could be used for projects other than the three capital improvement projects and how the money gets drawn down. Town Manager Hyatt will find out.

Mayor Allers suggested that Town Manager Hyatt and staff research emergency notification software. He received support from Council members. Town Manager Hyatt described using a system called Evergreen, which the state used at the time. He will investigate different systems.

Public Works Director Jason Freeman stated that he was working with DRMP regarding what could be reused for Bayside Park and FEMA-reimbursable. An invitation to bid on the project should go out very soon. Since the landscape was difficult to get reimbursed for, he welcomed landscape funding opportunities.

Director Freeman was working with DRMP to present the Bay Oaks plans for the review process.

Vice Mayor Atterholt questioned whether condo residents who applied for permits before Ian would have to pay for the permits again, even though they could not get into the condo to make repairs. Community Development Director Poposki replied that it was on a case-by-case basis. He encouraged residents to contact him.

Mayor Allers stated that people who had permits for any work before Ian could not get into their building now to do that work. Every permit that was approved before the hurricane but not completed should be allowed to be renewed at no cost.

Contractors are not allowed in the condos yet and homeowners should not be penalized. Town Manager Hyatt agreed. Mayor Allers remarked that permits should be allowed to be renewed if the permit expires after Ian; however, the permit could not be amended. Director Poposki questioned how long the grace period would be. Vice Mayor Atterholt suggested that the end of the year would suffice. Director Poposki recommended that any permits getting ready to expire could be extended with an email by the homeowner at no charge due to the state of emergency. Mayor Allers supported an extension to the end of the calendar year.

Interim Town Manager Wilkins praised Town Manager Hyatt. He stated that solicitation responses for the town attorney were due on May 22, 2023, and the process was the same as it was for the town manager. He suggested hiring a law firm to vet the candidates and manage the process. He described a possible timeline and noted a law firm was on standby to assist the town if needed.

Council Member Woodson supported hiring a third party. She stated they gave the town attorney directions to put the settlement agreement in place, but it had not been done, according to Mr. Persaud. She described a lack of deliverables, late deliverables and a lack of communication. She questioned whether another member of the law firm could step in for Town Attorney Herin, Jr. Interim Town Manager Wilkins replied affirmatively.

Mayor Allers agreed that a third party made sense, but he was not in favor of replacing Town Attorney Herin, Jr. right now. Council Member King agreed with a third party in the process and agreed that the town attorney should be replaced immediately.

Vice Mayor Atterholt supported having a firm help with the transition, but unless the town manager had a problem with Town Attorney Herin, Jr., he did not support replacing him with another member of his firm.

Interim Town Manager Wilkins felt that there had been operational challenges. Council Member Woodson felt the town attorney's actions were counterproductive and the town needed a fresh perspective.

Council Member Veach supported hiring a third party but disagreed with replacing the town attorney immediately.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. reiterated that he worked at the pleasure of the council and if they did not want him to serve, he would move on.

He stated that the mediation scheduled today for Mr. Persaud's case was rescheduled for June 12, 2023, at 2:30 p.m. at the mediator's request. He noted that a council member could be appointed to attend the mediation. He reminded everyone that he was not the attorney of record on the matter.

He was waiting for a settlement proposal in writing from the attorney representing Key Estero Shops and will present it to the council when he receives it.

Town Attorney Herin, Jr. stated that he would work with the new manager to resolve any issues. He added that if there were any issues with his service, the quality of it or the cost of it, he was available 24/7.

Mayor Allers received support to attend the mediation meeting.

Town Attorney Herin, Jr. added that the League of Cities was handling the Jamison litigation and he would keep the council posted.

Town Attorney Herin, Jr. indicated that he would reply to the email requesting the status of the Rood litigation, but he would not provide legal advice to members of the public. He stated that the permit was not issued for the dune walkover because the subject was on appeal. He advised all parties that a town-drafted indemnification agreement would have to be produced before a permit could be issued. Town Attorney Herin, Jr. did not tell Mr. Rood to draft his indemnification letter and had conversations with Mr. Rood, Mr. Kroemer and their attorneys regarding the matter. If the Town Council directs him and the staff to issue a building permit, he will prepare an indemnification agreement and send it to Mr.

Rood's attorney. A building permit will be issued if the attorneys agree and execute the agreement. Council Member Woodson replied that they agreed to issue a permit and the agreement should be drafted. Mayor Allers noted that circumstances changed, and construction could not start until after the turtle season, so there was no rush. Town Attorney Herin, Jr. stated that his agreement would contain a statement that Mr. Rood and Mr. Kroemer would release the town from future claims and litigation regarding removing the dune walkover if the

appeal against them and the town were successful. He added that he had a draft and would forward it to Mr. Rood and Mr. Kroemer's attorneys if so directed.
Council Member Veach did not see any rush and felt the Audubon suit had merit. Mayor Aller agreed there was no rush, but he did not see any harm in having the agreement drafted and sent to the applicants. Town Attorney Herin, Jr. will prepare the agreement.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King suggested that the Audit Committee start meeting and Mayor Allers felt that all advisory committees should start meeting again. Town Manager Hyatt commented that the meetings would be held at the Mound House. No items from other members.

A. SWFLC Voting Member

Appoint Council Member John R. King as a voting member representing the Town to the Southwest Florida League of Cities Board of Directors.
Council Member King stated that he would declare his candidacy as secretary and a vote would be taken in July.

Mayor Allers moved to appoint Council Member King to the Southwest Florida League of Cities Board of Directors; second by Vice Mayor Atterholt. Motion carried unanimously.

XVI. ADJOURNMENT

Council Member King moved to adjourn; second by Council Member Woodson. Motion carried unanimously.

The meeting was adjourned at 11:41 a.m.

Minutes adopted as amended, June 5, 2023; Motion by Council Member King and seconded by Council Member Veach. Passed 5-0.

Amy Baker, Town Clerk